

202-008493-015

**ORIGINAL**

**TRANS-PACIFIC AMERICAN FLAG  
BERTH OPERATORS AGREEMENT**

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**FMC Agreement No. 202-008493-015**



**A Conference Agreement  
Among Ocean Common Carriers**

**NOTE:** This Agreement was last republished on October 28, 1984.  
It does not contain an expiration date.

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APPENDIX A	NEUTRAL BODY AUTHORITY AND PROCEDURES	

ARTICLE 1 - NAME OF AGREEMENT

The name of this Agreement is the "TRANS-PACIFIC AMERICAN FLAG BERTH OPERATORS AGREEMENT."

ARTICLE 2 - PURPOSE OF AGREEMENT

The purpose of this Agreement is to assist American Flag Berth Operators to establish and maintain efficient, reliable, stable and economic liner transportation services in the Trade.

ARTICLE 3 - PARTIES TO AGREEMENT

The parties to this Agreement are the following American Flag Berth Operators:

AMERICAN PRESIDENT LINES, LTD.  
1800 Harrison Street  
Oakland, CA 94612

LYKES BROS. STEAMSHIP CO., INC.  
Lykes Center  
300 Poydras Street  
New Orleans, LA 70130

SEA-LAND SERVICE, INC.  
P.O. Box 800  
Iselin, NJ 08830

UNITED STATES LINES, INC.  
27 Commerce Drive  
Cranford, NJ 07016



ARTICLE 4 - GEOGRAPHIC SCOPE OF AGREEMENT

This Agreement covers the transportation of cargoes described in Article 5.1 on liner vessels, whether moving in all-water or intermodal service, direct or by transshipment, in the trades and various sub-trades (collectively, the "Trade") between ports and points in the United States, including Hawaii and Alaska, and its commonwealths, territories and possessions, and ports and points in Japan, Korea, Taiwan, Siberia USSR, the People's Republic of China, Hong Kong, Vietnam, Democratic Kampuchea (Cambodia), Thailand, Laos, the Republic of the Philippines, the Republic of Singapore, the Federation of Malaysia, the Sultanate of Brunei and the Republic of Indonesia.

ARTICLE 5 - AGREEMENT AUTHORITY

5.1 The parties may from time to time meet, discuss and agree upon rates, terms and conditions under which cargoes, including military household goods and personal effects, originating with the U.S. Department of Defense and moving under Department of Defense through Government bills of lading executed by truck lines, household goods movers, railroads and/or regulated or non-regulated freight forwarders operating under rate and service tenders approved by the U.S. Department of Defense shall be carried by the parties in the Trade.

5.2 Any tariff, schedule or compendium of such rates, terms or conditions, or any particular such rate, term or condition, agreed upon and approved by unanimous vote of all parties pursuant to Article 8.2 shall be binding upon and adhered to by all parties.

5.3 Credit for payment of freight and other charges due under tariffs issued pursuant to this Agreement may be extended by the parties only as permitted by and in accordance with rules and provisions and related bonding requirements (including rules and provisions in any standard credit agreement or indemnity bond forms) approved by unanimous vote of all parties pursuant to Article 8.2 and set forth in such tariffs. However, even if such credit has been approved and implemented, no credit shall be extended by any party to any shipper or consignee that the Secretary or his designee has advised the parties in writing is delinquent in the payment of freight or other charges to any party under tariffs filed pursuant hereto.

5.4 This Agreement specifically and without limitation covers service contracts, and authorizes the Agreement to negotiate and enter into all such contracts on behalf of the parties and otherwise to exercise full and complete control and jurisdiction over all such contracts, the parties hereby agreeing that they shall not enter into, maintain or modify any such contracts for their own account.



5.5 To establish uniform practices with respect to weight and measurement inspection, the parties may jointly employ inspection services at origin and/or destination and establish procedures for reporting and correcting discrepancies. Such misrating and inspection services shall coexist with any Neutral Body activities authorized pursuant to Article 10 and described in Appendix A.

5.6 Approvals and agreements provided for in this Agreement may be accomplished by telephonic or telegraphic poll or other communication systems, but if so shall be reduced to a written memorandum or other form of writing. A memorandum of all agreements reached by the parties pursuant hereto not otherwise in writing shall be prepared and copies promptly circulated to all parties and a copy furnished the Federal Maritime Commission ("FMC").

ARTICLE 6 - OFFICIALS OF AGREEMENT AND DELEGATIONS OF AUTHORITY

6.1 The parties may appoint and supervise a Secretary to coordinate the activities of the parties hereunder and perform such other duties within the scope of this Agreement as may be delegated to him. The FMC will be advised of the appointment of any such Secretary.

6.2 Meetings may be called by any party with no particular requirements as to advance notice.

6.3 If the majority agrees, parties will submit to the Secretary, not later than forty-five (45) days after the last day of the preceding calendar month, statistics of their cargo carryings in the Trade by revenue tons for the preceding calendar month, and the Secretary is authorized to compile and distribute to the parties a monthly recapitulation itemizing the composite totals, or statistical totals by individual parties if unanimously agreed, carried by the aggregate membership for each month in a format to be agreed upon by the parties.

6.4 The Secretary or his designee shall certify, when this is required, as to the accuracy and completeness of material filed with the FMC.

ARTICLE 7 - MEMBERSHIP, WITHDRAWAL, READMISSION AND EXPULSION

7.1 Any American Flag Berth Operator performing ocean common carrier transportation within the scope of this Agreement and who evidences an ability and intention of good faith to abide by all the terms and conditions of this Agreement as it may have been or may be amended may hereafter become a party to this Agreement by affixing its signature hereto or to a counterpart hereof. Every application for membership shall be acted upon promptly and no carrier who has complied with the foregoing qualifications shall be denied admission or readmission to membership. Prompt notice of admission to membership shall be furnished to the FMC and no admissions shall be effective prior





to the filing of an appropriate amendment with the FMC. Advice of any denial of admission to membership together with a statement of the reasons therefor shall be furnished promptly to the FMC.

7.2 Any party hereto may withdraw from this Agreement by giving thirty (30) days' written notice to the Secretary and all other parties. Prompt notice of such withdrawal shall be given to the FMC by the withdrawing party and no withdrawal shall be effective prior to the filing of an appropriate amendment with the FMC.

7.3 No party may be expelled against its will except for the failure to maintain a service within the scope of this Agreement over a period of ninety (90) days, or for failure to abide by any term or condition of this Agreement. No expulsion shall become effective until a detailed statement setting forth the reason or reasons therefor has been furnished the expelled member and an appropriate amendment has been filed with the FMC.

#### ARTICLE 8 - VOTING

8.1 This Agreement may be amended or modified only by unanimous agreement of all parties.

8.2 Except as otherwise specifically provided in this Agreement or any appendix hereto, all actions and decisions concerning matters subject to this Agreement shall require a unanimous affirmative vote of all parties.



ARTICLE 9 - DURATION AND TERMINATION OF AGREEMENT

This Agreement shall continue in effect indefinitely until cancelled by the parties by a vote of unanimity-less-one of all parties.

ARTICLE 10 - NEUTRAL BODY POLICING

Upon written request of one party submitted to the Secretary, with copies to all other parties, the Agreement shall engage the services of an independent neutral body ("Neutral Body") to police fully the obligations of the Agreement and its parties. In the event that a Neutral Body is employed, the terms and conditions of such employment will be determined by a separate contract, and the Neutral Body authority and procedures relating thereto will be described in Appendix A to this Agreement.

ARTICLE 11 - PROHIBITED ACTS

This Agreement shall not engage in any boycott or take any other concerted action resulting in an unreasonable refusal to deal or engage in any predatory practice designed to eliminate the participation, or deny the entry, in the Trade of a common carrier not a party to the Agreement, a group of common carriers, an ocean tramp or a bulk carrier.

ARTICLE 12 - CONSULTATION; SHIPPERS' REQUESTS AND COMPLAINTS

12.1 Consultation. The parties or their designated representative(s) will, upon written request, meet with the requesting entity on reasonable notice in order to promote the commercial resolution of disputes to the extent permitted by law and to cooperate in preventing and eliminating malpractices.

12.2 Shippers' Requests and Complaints. The Agreement will promptly and fairly consider shippers' requests and complaints and advise the shippers as to action taken on such requests and complaints. Requests and complaints may be made by filing with the Secretary or other Agreement representative a statement which specifies the exact nature of the request or complaint and the relief requested. The Agreement will promptly distribute this statement to each party to be considered at an appropriate meeting soon after its distribution. The Agreement will render a decision on the request or complaint at or promptly after this meeting. This decision will be in writing, signed by an Agreement representative and served upon the shipper. The procedures for filing requests and complaints shall be set forth in the Agreement tariff or tariffs.

ARTICLE 13 - INDEPENDENT ACTION

Notwithstanding any other provision of this Agreement, except those concerning service contracts as described in Article



5.4, and Agreement action governing such contracts, any party may take independent action on any matter within the scope of the authority conferred by this Agreement, by complying with the following procedures:

(1) The party proposing to take independent action will give the Secretary a minimum of ten (10) calendar days' advance written notice of the precise tariff rate or service item it proposes to implement by independent action. Notice to the Secretary must be by electronic text transmission or other writing. The notice must state the date on which the proposal is to become effective; but such effective date may not be earlier than ten (10) days after receipt of the notice by the Secretary or earlier than permitted by the Shipping Act of 1984. Receipt of such notice shall be the day it is actually received at the Secretary's office, except that if the notice is received at the Secretary's office after regular business hours or on a weekend or holiday, when the Secretary's office is officially closed, receipt shall be deemed to be as of the next regular business day.

(2) The Secretary will promptly docket the proposed independent action for consideration by the Agreement. If the Agreement does not adopt the rate or service item stated in the notice for all Agreement parties by the effective date



specified in the notice, it will be published by the Agreement on behalf of such party and filed with the FMC to be effective no later than the date specified in the notice.

(3) Any party may, in addition to the ten (10) day independent action provided herein, follow an independent action initiated by another party by giving written notice to the Secretary. Such "following" independent action may not have an earlier filing or effective date than the initial independent action; and it must be identical to the initial independent action.

(4) Any notice of independent action must be taken in the name of and with the express authority of a designated senior executive of the party proposing such action or one of his designated alternates. The designated senior executive shall be a person located at the party's corporate headquarters who regularly exercises control over the party's pricing activities in the Pacific trades, and his designation shall be filed by electronic text transmission or other writing with the Secretary. Parties may designate no more than two (2) alternates who also shall be located at the party's corporate headquarters, and the names of the alternates also shall be filed in writing with the Secretary.

(5) An independent action may be withdrawn by any party taking such action at any time prior to its effective date or, after its effective date, it may be cancelled upon written





notice by such party to the Secretary subject to any applicable tariff filing and notice requirements. An independent action rate or service item remains at all times subject to the provisions of this Agreement. Any subsequent change by a party in a rate or service item on which the party has taken independent action which results in a reduction in cost to the shipper or consignee must be accomplished by further and separate independent action taken pursuant to this Article 13. In the case of any change by a party in a rate of service item set by independent action and which results in an increase in cost to the shipper or consignee, the party shall make such change by giving the Secretary twenty-four (24) hours' notice of the change, subject to any tariff filing and notice requirements of the Shipping Act of 1984. If, subsequent to the effective date of a rate or service item set by a party or parties by independent action, the Agreement increases or otherwise changes the Agreement's rate or service item applicable to the same cargo movement, the independent action rate or service item shall terminate unless the party or parties which have taken independent action thereon notify the Secretary in advance of the effective date of the Agreement action not to adjust the independent action rate or service item or to make only a specified partial adjustment of such item.

(6) Any tariff matter published pursuant to independent action shall be published in and as part of the appropriate Agreement tariff or tariffs or as an annex thereto

clearly identifying such action with the name of the party or parties taking such independent action. Parties taking independent action must charge and collect freight and other charges and provide service strictly in accordance with the terms of such independent action as set forth in the tariff, and failure to do so constitutes a breach of the Agreement subject to all the provisions of this Agreement and amendments and appendices thereto relating to breaches. Prior to giving notice of any independent action hereunder, each party hereto is encouraged, but is not required, first to propose to the Agreement that the Agreement itself take the action and to permit the Agreement to act thereon at a meeting.

ARTICLE 14 - BREACH OF AGREEMENT

14.1 It shall be a breach of this Agreement to undertake any independent action without complying with the provisions of Article 13 governing such action. It shall also be a breach of this Agreement for any party, either directly or indirectly by whatever means, to engage in the transportation of cargoes subject to this Agreement at rates or upon terms and conditions other than those: (i) agreed upon hereunder; (ii) set forth in any separate tariffs which are permitted to continue; (iii) established pursuant to a right of independent action; or (iv) set forth in the essential terms of a service contract. Additionally, there shall be no undue preference or advantage or



unjust or unreasonable discrimination or unfair practices against any consignor or consignee by any party.

14.2 Each party shall be responsible for the acts or omissions of its officers, employees, agents, and sub-agents, and of its parent, subsidiary, associated, related or affiliated companies, as well as of any other persons, firms, or corporations in any manner subject to its control (collectively "associates"), which acts or omissions may in any manner affect the Trade covered by this Agreement. Every act or omission of any associate in violation of this Agreement shall be imputed to the party and shall constitute a violation by the party as fully as if done by the party itself.

14.3 Unless the conduct is subject to the jurisdiction of a Neutral Body which has been engaged pursuant to Article 10, the existence of a breach and the assessment of any damages therefor shall be determined by unanimous decision of all parties (but with no vote accorded to the party or parties charged with breach), and shall be communicated promptly in writing to all parties. Such decision shall be final and binding as between the parties unless arbitration is invoked under Article 15. If arbitration is not invoked within thirty (30) days after the decision of the parties is made, such decision shall be treated as if it were an arbitrator's award under Article 15 and shall be final, binding and enforceable in any court having jurisdiction.

ARTICLE 15 - ARBITRATION

Should any dispute arise between or among any parties concerning or based upon this Agreement, the matter in dispute shall in all cases be referred for resolution to a single arbitrator in San Francisco, California, or such other place as may be mutually agreed by the parties to the dispute. The arbitrator shall be appointed by the mutual agreement of the parties to the dispute or, failing such agreement and upon application by one of them, by the American Arbitration Association. Except by agreement of the parties to the dispute, there shall be no pre-hearing discovery. The decision of the arbitrator shall be final, binding, and not subject to further review and may be enforced by a prevailing party in any court having jurisdiction. The costs and expenses of such arbitration (including reasonable attorney's fees and costs incurred by a party or parties) shall be borne by the non-prevailing party or as the arbitrator shall otherwise determine.

ARTICLE 16 - EXPENSES


Any expenses incurred in carrying out this Agreement shall be borne by the parties as they may from time to time mutually agree pursuant to Article 8.2.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized. This Agreement may be executed in




counterparts, each of which will constitute an original hereof. The parties authorize the firm of Morgan, Lewis & Bockius, Washington, D.C., to file this Agreement on their behalf with the Federal Maritime Commission and to file such associated supporting materials as may be required to effectuate the authority set forth herein.

AMERICAN PRESIDENT LINES, LTD.

BY   
Name: Raymond A. Velez  
Title: Vice President-Pricing and  
Conference Affairs

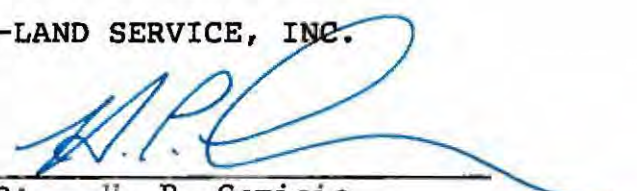
Date  
Signed: September 23, 1985

LYKES BROS. STEAMSHIP CO., INC.

BY   
Name: J. T. Lykes, III  
Title: Assistant Vice President-Pricing

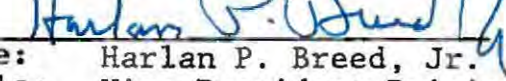
Date  
Signed: September 23, 1985

SEA-LAND SERVICE, INC.

BY   
Name: H. P. Camicia  
Title: Director, Pricing, Pacific  
Division

Date  
Signed: September 23, 1985

UNITED STATES LINES, INC.

BY   
Name: Harlan P. Breed, Jr.  
Title: Vice President-Pricing,  
Pacific Services

Date  
Signed: September 23, 1985



Neutral Body Policing

Pursuant to Article 10 of the Agreement, the following Neutral Body authority and related procedures shall be effective until, and expire at, midnight, PST, December 31, 1985:

(a) Appointment and Qualifications  
of the Neutral Body

(1) The Neutral Body shall be authorized to investigate upon its own initiative, and/or to receive and investigate complaints reporting all possible breaches of the parties' Agreement, tariffs, rates or rules and regulations involving malpractice as defined in paragraph (b)(2) of this Appendix A, and to decide in each case whether one or more malpractices were committed, and, if such malpractices are found, to assess damages.

(2) Appointment of the Neutral Body will be by unanimous vote of all the parties hereto. The appointment will be made from among candidates which are qualified and willing to serve. Nothing herein shall preclude the Neutral Body from acting in a similar capacity for any other conference or rate-fixing agreement or any member thereof or any independent carrier in any trade. Prior to such appointment a candidate will be required to divulge to the parties any "professional or business relationships or financial interests" which it may have with any of the parties; provided, however, that such interests will not be considered to be created by reason of the Neutral Body acting in a similar capacity for any independent carrier, conference or rate agreement in any trade and need not be divulged by the Neutral Body pursuant to this paragraph.

The candidate will also be required to agree, in the event of appointment, to divulge any future proposals it might receive to create such interests, and promise to obtain the parties' approval thereof before accepting any such proposal. Such interest so divulged, if any, exclusive of financial interest, will not affect the qualification of the Neutral Body when appointed by the parties with knowledge thereof, and the parties will not raise an objection, based on such grounds, to an investigation or decision made or damages assessed by the Neutral Body or its agents; provided, however, that the Neutral Body will be required before appointment to agree to disqualify itself in the event of an investigation against a party with which it may have such a professional or business relationship. After the Neutral Body disqualifies itself the Secretary is authorized to appoint an agent without such interest in the respondent to conduct the particular investigation and handle the matter on



behalf of the Neutral Body, and such appointee shall have all of the authority and duties of the Neutral Body for the particular matter through the date when the appointee reports its decisions to the Secretary under paragraph (f)(4) of this Appendix A.

(3) The Neutral Body will have the authority and responsibility to engage agents, lawyers and/or experts including shipping experts, who can assist with its investigation and to pay on behalf of the parties hereto all costs incidental thereto. Such agents or experts appointed by the Neutral Body must not have any interest in the particular party so investigated, although they will not be disqualified because they may have an interest, exclusive of a financial interest, with any other party or its agents.

(b) Jurisdiction of the Neutral Body

(1) The Neutral Body shall have jurisdiction to handle, in accordance with the procedures of this Appendix A, upon its own initiative or upon complaints submitted to it by the Secretary or a party, all alleged or suspected malpractices.

(2) The term "malpractice" as employed in this Appendix A is hereby defined to mean and include any violation or breach of the provisions of the Agreement, an Agreement tariff (including independent sections of and appendices to that tariff) or any rules or regulations promulgated thereunder. There shall be no undue preference or advantage or unjust or unreasonable discrimination or unfair practices against any consignor or consignee by any of the parties hereto. The Agreement shall not engage in any boycott or take any other concerted action resulting in an unreasonable refusal to deal or engage in any predatory practice designed to eliminate the participation, or deny the entry, in the Trade of a common carrier not a member of the Agreement, a group of common carriers, an ocean tramp or a bulk carrier. Further, any act, failure or omission which, if done, committed or suffered by a party hereto would constitute a malpractice, shall constitute a malpractice by such party with the same force and effect if done, suffered or committed, directly or indirectly, by an agent or sub-agent, by a parent, affiliate, subsidiary or associate company of such party. The parties undertake that they will give such notices and take such actions to and with respect to their agents and sub-agents and parent, affiliate and subsidiary or associate companies as will fully inform them of their liability which the respective parties here have assumed as a result of any act, failure or omission of such agents or sub-agents, or parent, subsidiary, affiliate or associate companies.



(c) Parties' Responsibility to Report  
Malpractices and Assist Investigations

The parties and/or the Secretary shall report promptly to the Neutral Body in a written complaint any and all information of whatsoever kind or nature coming to their knowledge which, in their opinion, indicates the commission of a malpractice by a party or its agents, and failure to report such information by any party will be a breach of this Agreement.

(d) Investigation

(1) The Neutral Body and/or its agents shall have the power, authority and responsibility to investigate upon its own initiative and/or to investigate complaints, and in so investigating to call upon a party hereto (which term shall include the member line and any parent, affiliate, subsidiary, or associate company of such party) or its agents at any of their offices during office hours and inspect, copy and/or obtain "correspondence, records, documents, signed written statements of oral information and/or other materials" (hereinafter in this Appendix A "materials"), which materials are deemed by the Neutral Body to be relevant to the investigation. Upon making such a call, the Neutral Body shall have the right to see and copy such materials immediately and without prior screening by the party or its agents. In investigating upon its own initiative, it is the understanding of the parties that the Neutral Body may conduct such investigations either upon suspicion that a malpractice has occurred or because it wants assurance that a malpractice has not occurred.

(2) Correspondingly, each of the parties shall have the duty and responsibility to supply such materials and to cooperate in interviews promptly upon demand made in person by the Neutral Body or its agents and without prior screening, whether said materials or personnel are located in the parties' own offices or in its agents' offices. Failure of a party or its agents to supply the materials required by the Neutral Body or its agents promptly will constitute a breach of this Agreement by the party, and the party undertakes to thoroughly inform its agents of the party's liability for their conduct and obtain their commitment to comply with the Agreement, tariff rates or rules and regulations. In addition, the parties undertake an affirmative duty to cooperate and assist the Neutral Body in obtaining other required information whenever possible.

(3) The records of this Agreement will be made available to the Neutral Body on request and the Secretary and staff will render all assistance possible to the Neutral Body during investigations.



(e) Confidential Information

(1) The Neutral Body will under no circumstances disclose the name of the complainant to the respondent or anyone else, including the Neutral Body's agents, unless specifically authorized to do so by the complainant.

(2) The Neutral Body will treat all information received during investigations, regardless of the sources, as confidential and will not divulge any such information to anyone, except in reporting malpractices found and damages assessed to the Secretary, and then only to the extent that the Neutral Body itself deems appropriate.

(3) Provided, however, that nothing herein shall be construed to deny the FMC access to a copy of any self-policing records, statistics, reports or other information (including the identity of members) in contravention of a duly issued Order of the FMC or an FMC employee with delegated authority to issue such Order.

(f) Hearing for the Respondent; Neutral Body  
Decisions and Announcement Thereof

(1) On concluding its investigation the Neutral Body will consider the information obtained and decide in its absolute discretion whether the facts have been sufficiently established to constitute a malpractice, and if a malpractice is found which was not covered in the complaint, such malpractice may also be reported and liquidated damages may be assessed thereon against any party liable.

(2) In deciding whether a malpractice has been committed, the Neutral Body will not be restricted by legal rules of evidence or the burden of proof required to establish criminality, or even a civil claim. Instead it will employ rules of common sense in determining malpractices and assessing liquidated damages and the only standard required is that the information developed is persuasive to the Neutral Body itself that the malpractice occurred.

(3) After the Neutral Body has completed its investigation, it shall advise the respondent either that a malpractice has not been found or that there are reasonable grounds to believe that a malpractice has been committed. In the latter event, the respondent will be informed in writing at this time of the nature of the alleged malpractice, and the evidence concerning it which the Neutral Body in its absolute discretion is able to disclose. In so advising the respondent, the Neutral Body shall disclose the actual evidence which it has at its disposal



unless for reasons compelling to it such disclosure would tend to reveal the identity of the complainant or otherwise jeopardize the confidentiality of the Neutral Body's sources of information in which event it may be deleted or summarized. In all cases, however, the Neutral Body will inform the respondent of the nature of the alleged malpractice, bearing in mind basic precepts of fair play. Within fifteen (15) days, or such reasonable time as the Neutral Body may grant, the respondent may offer to the Neutral Body such written explanation and/or rebuttal evidence as it may deem proper and desirable. Any explanations or evidence of witnesses that respondent or the Neutral Body may decide to present shall be reduced to writing and sworn. Alternatively, if the respondent requests, it may meet with the Neutral Body and offer such explanations and/or rebutting evidence as it may deem proper and desirable. In such event, a recording or stenographic record of the hearing shall be made by the Neutral Body, and, upon the timely request of the respondent or the taking of an appeal from the Neutral Body's decision, a copy of the hearing transcript shall be furnished the respondent. If before closing the record the Neutral Body shall obtain any additional evidence relevant to the case, such evidence shall also be furnished to the respondent and a delay granted, if necessary, to allow the framing of an adequate defense. The Neutral Body shall consider only the evidence which was disclosed to the respondent, together with such explanations and/or rebutting evidence the respondent may have offered, and make its decision thereon in accordance with the standards set forth under paragraph (f)(2) of this Appendix A.

(4) The Neutral Body shall notify the respondent in writing of its decision either that a malpractice has been found and the amount of any liquidated damages assessed, or that a malpractice has not been found. In assessing said damages, the parties further recognize that breaches of the Agreement, tariff rates or rules and regulations cause substantial damages, not only in lost freight but in consequent instability of the parties' rate structure. The parties further recognize that the damages caused are cumulative with the number of malpractices but the parties further recognize that it is difficult to assess such damages precisely. Therefore, the Neutral Body is authorized to assess liquidated damages for each such breach in the maximum amount of One Hundred Twenty Thousand Dollars (\$120,000) U.S.A. currency.

Notwithstanding the difficulty in assessing such damages precisely, in determining the amount of liquidated damages to be assessed, the Neutral Body shall consider such mitigating circumstances as it may deem relevant. Fundamental fairness will, at all times, be afforded all members accused of committing a malpractice.



After notice of its decision to the respondent, the Neutral Body will report to the Secretary the decision and the amount of the damage assessed, if any. In addition, the Neutral Body may report evidence or information discovered during its investigation, but the extent of such further reporting, if any, shall be subject to absolute discretion of the Neutral Body, and in no event will the Neutral Body report the name of the complainant without consent, or report confidential information.

(5) The Secretary will notify the parties, other than the respondent, of the decision and damages, if any, and will issue to the respondent a debit note for any liquidated damages assessed.

(g) Decisions of the Neutral Body

(1) The decisions of the Neutral Body shall be final and conclusive unless, within thirty (30) days after the accused party receives the Neutral Body's report, it shall demand review by arbitration in accordance with the procedures set forth in paragraph (h) of this Appendix A.

(2) Any liquidated damages assessed by the Neutral Body shall be paid to the Secretary for the account of the parties other than the respondent within thirty (30) days after the accused party receives the report of the Neutral Body unless review by arbitration is sought under paragraph (h) hereof. The Secretary shall promptly distribute the amounts received equally among the parties other than the payor. Said distribution may be changed by the parties from time to time as determined by the same vote required for appointment of the Neutral Body in paragraph (a)(2) hereof. If any party shall omit to pay to the parties said amounts within said period the Secretary shall on behalf of the parties take any action recommended by the Agreement Counsel for the collection of the amount so assessed. Further, the omission of any party to pay within thirty (30) days after demand therefor the amount assessed against it by the Neutral Body, unless arbitration is sought, or to pay the sum imposed by arbitrators as provided in paragraph (h)(7) hereof, shall result in the immediate automatic loss of all voting rights of such party so in default except right to vote on an amendment of this Agreement, but said voting rights shall be immediately restored upon payment of the amount assessed. Any such loss and/or restoration of voting rights shall be promptly reported to the FMC.

(3) The Neutral Body shall compile and retain for at least five (5) years a complete and thorough record of all its investigatory and presecutorial activities, including a description of all complaints, the basis, nature and scope of all self-



initiated investigations, and the disposition of all investigations.

(4) The Neutral Body shall adopt and publicize procedures for filing complaints and assessing liquidated damages.

(h) Review by Arbitration

(1) Notice of Intent to Seek Arbitration. Upon receiving actual written notice of an adverse determination by the Neutral Body, the respondent shall have thirty (30) days within which to notify the Secretary in writing of its intent to seek review of the Neutral Body's determination by arbitration. Failure to give such timely notice shall constitute a waiver of the right to review.

(2) Applicable Law and Location of Arbitration. All parties hereto agree to arbitration in San Francisco, California, by a panel free of any professional, business or financial relationship with any of them. Upon agreement of the parties, arbitration may be held in any other place. Arbitration shall be pursuant to the law of the State of California and under the commercial arbitration rules of the American Arbitration Association to the extent not inconsistent with the law of California.

(3) Selection of Arbitrators. Within fifteen (15) days after serving its notice of intent to seek review by arbitration, the respondent shall submit to the Secretary the name of one arbitrator, and within fifteen (15) days thereafter, the other parties hereto shall select one arbitrator, by a two-thirds vote of all parties (excluding respondent) with prompt notice to respondent of the selection made. The two arbitrators so named shall, within fifteen (15) days, select a third arbitrator, except that if they are unable to agree upon the selection of a third arbitrator within said period, then and in that event, the Secretary shall immediately file the names and addresses of the first two arbitrators with the American Arbitration Association which shall promptly appoint the third arbitrator. In lieu of three arbitrators provided in this paragraph (h)(3), if all parties (including the respondent) agree, a single arbitrator may be selected whose functions shall be identical to those described herein for three arbitrators.

(4) Arbitration Procedures. When the designation of the panel of arbitrators has been completed, it shall notify the respondent, the Secretary and the Neutral Body of its composition. Within ten (10) days after such notification, the Neutral Body shall file with the panel a copy of the Neutral



Body's investigation report (including the evidence initially relied upon), any evidence subsequently disclosed to the accused, and the respondent's written explanation and/or rebuttal evidence, and such filing shall constitute the record on review. Alternatively, if the hearing was oral, the Neutral Body shall file with the panel a copy of the hearing transcript which shall incorporate the Neutral Body's investigation report (including the evidence initially relied upon), any evidence subsequently disclosed to the accused, and respondent's explanation and/or rebuttal evidence, and such filing shall constitute the record on review. At this time, the Neutral Body shall also submit to the panel its decision letter (and, if desired, accompanying brief) stating on what basis it determined that a malpractice had occurred, its certification that all of the evidence and data relied upon in reaching its decision was shown to respondent, and that respondent was given an adequate opportunity to explain or rebut such evidence and data. A copy of this material shall be served upon respondent at the same time it is filed with the arbitration panel.

Within fifteen (15) days after receipt of the Neutral Body's submission to the arbitration panel, the respondent may file in writing its exceptions and brief in opposition. Within fifteen (15) days after respondent's submission, the Neutral Body may file its reply which is to be confined to matters raised or argued by respondent. In the event that respondent files nothing, the matter will be considered solely on the basis of the decision letter (and accompanying brief, if any) and record on review as furnished by the Neutral Body. All times specified in paragraphs (h)(3) and (4) hereof may be extended by written stipulation of the respondent, Neutral Body and the arbitrators.

(5) Arbitrators' Scope of Review. The arbitrators, by majority vote, may affirm the Neutral Body's determinations or set aside or modify any finding they deem erroneous, and may cancel, reduce or increase any award of liquidated damages which they deem improper (subject to the maximum specified in paragraph (f)(4) hereof). Their decision shall be in writing setting forth their findings of fact and conclusions and shall be made within thirty (30) days after the matter is submitted. A copy thereof shall be served on respondent, the Neutral Body and the Secretary.

(6) Finality of Arbitrators' Decision. The decisions of the arbitrators shall be final, binding and conclusive.

(7) Payment of Arbitration Award. Any sum imposed by the arbitrators shall be paid to the Secretary for account of the parties other than the respondent within thirty (30) days after receipt of a debit note from the Secretary, following service of



the arbitrators' decision in accordance with paragraph (h)(5) hereof and the sums when received shall be distributed by the Secretary among the parties other than the payor in equal shares. Said distribution may be changed by the parties from time to time as determined by the same vote required for appointment of the Neutral Body in paragraph (a)(2) hereof. In default of payment of the sum imposed by the due date, the parties may resort to any remedies at law, in equity, and under this Agreement. It is understood between the parties that decisions of the Neutral Body and/or the arbitrators are not an admission of proof of guilt or liability under law.

(i) Payment of Fees and Expenses

The payment of the fees and the necessary expenses of the Neutral Body incurred in the performance of its duties under this Appendix A shall be borne by the parties equally. Said apportionment may be changed by the parties from time to time as determined by the same vote required for appointment of the Neutral Body in paragraph (a)(2) hereof. The payment of the arbitrators' fees shall be borne by the respondent and reimbursed to the parties in accordance with the requirements of paragraph (h)(7) should the Neutral Body's determination be affirmed. If the Neutral Body's determination is reversed, the arbitrators' fees shall be borne equally by the parties other than respondent, unless reversed in part, and then shall be borne equally by such parties and the respondent and reimbursed in accordance with paragraph (h)(7).

(j) Legal Proceedings Involving  
Self-Policing Activity

The parties agree without prejudice to rights under any contract entered into with the Neutral Body that they will neither jointly nor severally bring any legal action whatsoever against the Neutral Body or its agents or the arbitrators for damages allegedly arising out of their decisions or for any act or omission occurring in the discharge of their functions under this Appendix A. In addition, each party agrees to hold the other parties, the Neutral Body, and its agents and the arbitrators harmless from any claims which may be brought by its agents or employees against another party, the parties, the Neutral Body or its agents, or the arbitrators for damages allegedly arising out of the acts, omissions or functions of the Neutral Body or the arbitrators.

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